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*Final Analysis*  
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**Reps.** Latta, Goodman, Seitz, Reinhard, Lendrum, Willamowski, Schmidt, Aslanides, Fedor, Carano, Womer Benjamin, Buehrer, Coates, Manning, Schneider, Hartnett, Flowers, Calvert, Hughes, Carmichael, Reidelbach, Setzer, Clancy, McGregor, Niehaus, Distel, Cirelli, Latell, Salerno

**Sens.** Oelslager, Amstutz

**Effective date:** July 8, 2002; certain provisions effective July 24, 2002, or the date of the Interstate Compact for Adult Supervision, whichever is later

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**ACT SUMMARY**

- Establishes a penalty for the preexisting prohibition contained in the offense of illegal processing of drug documents that prohibits knowingly making a false statement in any prescription, order, report, or record required by the Controlled Substances Laws or the Pharmacy/Dangerous Drugs Laws.
- Expands the circumstances in which the penalty for the offense of domestic violence is enhanced to also enhance the penalty when the offender *previously pleaded guilty to* certain specified offenses or when the offender previously has been convicted of or pleaded guilty to a violation of a law of the United States, a law of another state, or a municipal ordinance of a municipal corporation in another state that is substantially similar to certain Ohio offenses.
- Makes an offender ineligible for intervention in lieu of conviction if the offender is charged with corrupting another with drugs, a drug trafficking offense, illegal manufacture of drugs or cultivation of marihuana, or illegal administration or distribution of anabolic steroids and the offense is a felony of the fourth or fifth degree or a misdemeanor.

- Clarifies that an offender charged with a drug possession offense that is a felony of the fifth degree or a misdemeanor does not need prosecutorial approval to be eligible for intervention in lieu of conviction.
- Expands one of the factors used in sentencing an offender for a felony of the fourth or fifth degree to require the court also to consider whether the offender at the time of the offense was serving a prison term.
- Limits the circumstances in which the court must impose the shortest prison term authorized for a felony to exclude instances when the offender was serving a prison term at the time of the offense.
- Expands the definition of "repeat violent offender" that applies in the Criminal Sentencing Law to also include a person who at the time of the offense for which sentence is being imposed was serving a prison term for a specified offense.
- Expands the standard for requiring consecutive service of prison terms for multiple offenses to permit the imposition of consecutive sentences when one or more of the multiple offenses was committed while the offender was awaiting trial or sentencing, was under a community control sanction, or was under post-release control for a prior offense, and expands the standard to permit consecutive sentences to be imposed when there are multiple courses of conduct that include multiple offenses.
- Includes in the statutorily specified list of factors that a court imposing sentence for a felony must consider as indicating that the offender is likely to commit future crimes that, at the time of committing the offense the offender had been unfavorably terminated from post-release control under the act for a prior offense.
- Clarifies when an offender may file a motion for judicial release if the offender is serving a stated prison term of exactly ten years.
- Transfers from the sentencing court to the Department of Rehabilitation and Correction (DRC) the duty to determine if an offender is eligible for placement in a program of shock incarceration or is eligible for placement in an intensive program prison but retains the court's authority to recommend or disapprove placement in any such program or prison.

- Requires the APA to classify the termination of post-release control as favorable or unfavorable depending on the offender's conduct and compliance with the conditions of supervision, and requires DRC, no later than six months after the act's effective date, to adopt a rule establishing the criteria for the classification of a post-release control termination as "favorable" or "unfavorable."
- Relocates a provision regarding the treatment of persons who commit new felonies while on parole or post-release control for a prior felony and modifies it by: (1) permitting the court to terminate the term of post-release control as a result of the violation, (2) authorizing the court to impose community control sanctions for the violation, and (3) rephrasing portions of the provision.
- Extends from not later than July 1, 2001, to not later than July 1, 2002, the date by which the State Criminal Sentencing Commission must recommend to the General Assembly any necessary changes to the forfeiture statutes in the Criminal Code and the Motor Vehicles Law.
- Requires an applicant for a license to practice nursing as a registered nurse or as a licensed practical nurse who is applying for licensing by examination and entered a nursing training program on or after June 1, 2003, or who is applying for licensing by endorsement, or an applicant for a certificate to practice as a dialysis technician who entered a dialysis training program on or after that date, to request BCII to perform a criminal records check that includes an FBI check and to submit to the Board of Nursing the results of that check, as part of the application process.
- Requires the Board of Nursing to refuse to grant a license to practice nursing as a registered nurse or as a licensed practical nurse to a person who is required to request a criminal records check as described in the preceding paragraph and whose check indicates that the person has pleaded guilty to, been convicted of, or had a judicial finding of guilt for committing aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or a substantially similar law of another state, the United States, or another country.



- Requires the Board of Nursing to refuse to grant a certificate to practice as a dialysis technician to a person who is required to request a criminal records check as described in the second preceding paragraph and whose check indicates that the person has pleaded guilty to, been convicted of, or had a judicial finding of guilt for committing aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or a substantially similar law of another state, the United States, or another country.
- Provides that, in general, the results of any criminal records check conducted pursuant to a request made under the act by an applicant for a license to practice nursing or a certificate to practice as a dialysis technician, and any report containing those results, are not public records for purposes of the Public Records Law.
- Provides that a temporary permit to practice nursing issued to a person who applies for licensing by endorsement expires at the earlier of 180 days after issuance or upon the issuance of a license by endorsement, and that it terminates automatically if the criminal records check completed regarding the applicant under the act indicates that the applicant previously has been convicted of, pleaded guilty to, or had a judicial finding of guilt for, any of the offenses that disqualify an applicant for the issuance of a license.
- Permanently bars a person from obtaining a license to practice nursing in Ohio if the person has been issued a temporary permit to practice nursing and the temporary permit is automatically terminated as described in the preceding paragraph.
- Expands the list of medications that a dialysis technician may administer, when ordered by a licensed health professional authorized to prescribe drugs, to include oxygen when the administration of the oxygen has been delegated to the technician by a registered nurse.
- Specifies that, regarding the continuing education required for a dialysis technician who wishes to renew a certificate to practice, of the hours of continuing education completed during the period for which the certificate was issued, at least one hour of the education must be directly related to the statutes and rules pertaining to the practice of nursing in Ohio or the practice as a dialysis technician in Ohio.

- Expands the offense of "unauthorized use of property" to specifically prohibit knowingly gaining access to, attempting to gain access to, or causing access to be gained to any "cable service" or "cable system" without the consent of, or beyond the scope of the express or implied consent of, the owner of the cable service or cable system or other person authorized to give consent by the owner, and expands a civil remedy that previously applied regarding the offenses of "possession of an unauthorized device" and "sale of an unauthorized device" to permit recovery of damages related to conduct in violation of the expanded offense.
- Provides that the members of the Ohio Council for Interstate Adult Offender Supervision, enacted in Sub. H.B. 269 of the 124th General Assembly, will serve without compensation, but that each member will be reimbursed for the member's actual and necessary expenses incurred in the performance of the member's official duties on the Ohio Council.

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## CONTENT AND OPERATION

### *Illegal processing of drug documents*

#### *Formerly*

Under preexisting law, unchanged by the act, a person commits the offense of "illegal processing of drug documents" by doing any of the following (R.C. 2925.23(A) to (D)):<sup>1</sup>

(1) Knowingly making a false statement in any prescription, order, report, or record required by the Controlled Substances Laws or the Pharmacy/Dangerous Drugs Laws;

(2) Intentionally making, uttering, or selling, or knowingly possessing any false or forged: (a) prescription, (b) uncompleted preprinted prescription blank

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<sup>1</sup> *These prohibitions do not apply to licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4725., 4729., 4731., and 4741. of the Revised Code. (R.C. 2925.23(E).)*

used for writing a prescription, (c) official written order, (d) license for a terminal distributor of dangerous drugs, or (e) registration certificate for a wholesale distributor of dangerous drugs;

(3) By committing the offense of theft, acquiring any: (a) prescription, (b) uncompleted preprinted prescription blank used for writing a prescription, (c) official written order, (d) blank official written order, (e) license or blank license for a terminal distributor of dangerous drugs, or (f) registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs;

(4) Knowingly making or affixing any false or forged label to a package or receptacle containing any dangerous drugs.

Formerly, the law did not contain a penalty for a violation of the prohibition described above in paragraph (1). Under preexisting law continued by the act, if the offender violates a prohibition described above in paragraph (2)(b), (d), or (e) or paragraph (3)(b), (d), (e), or (f), illegal processing of drug documents is a felony of the fifth degree. Under preexisting law continued by the act, if the offender violates a prohibition described above in paragraph (2)(a) or (c), paragraph (3)(a) or (c), or paragraph (4), both of the following apply: if the drug involved is included in schedule I or II, and is not marihuana, illegal processing of drug documents is a felony of the fourth degree, and if the drug involved is included in schedule III, IV, or V or is marihuana, it is a felony of the fifth degree; the Felony Sentencing Law imposes no preference for or against a prison term on the offender. (R.C. 2925.23(F).)

### **Operation of the act**

The act establishes a penalty for a violation of the preexisting prohibition against knowingly making a false statement in any prescription, order, report, or record required by the Controlled Substances Laws or the Pharmacy/Dangerous Drugs Laws (the prohibition in paragraph (1), above). The penalty is as follows: if the drug involved is in schedule I or II, and is not marihuana, the violation is a felony of the fourth degree, or, if the drug involved is a dangerous drug, is included in schedule III, IV, or V, or is marihuana, the violation is a felony of the fifth degree. In both cases, the Felony Sentencing Law imposes no preference for or against a prison term on the offender. (R.C. 2925.23(F).)

### **Domestic violence**

#### **Formerly**

The preexisting offense of "domestic violence" contains three distinct prohibitions, none of which are changed by the act. It prohibits a person from: (1)

knowingly causing or attempting to cause physical harm to a family or household members, (2) recklessly causing serious physical harm to a family or household members, or (3) by threat of force, knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

A violation of any of the prohibitions is the offense of domestic violence. Under preexisting law retained by the act, generally, a violation of the third prohibition is a misdemeanor of the fourth degree, and a violation of either of the first two prohibitions is a misdemeanor of the first degree. But under former law, if the offender *previously had been convicted of* domestic violence, a violation of a municipal ordinance substantially similar to domestic violence, certain assault or menacing-related offenses involving a person who was a family or household member at the time of the violation, or a violation of a municipal ordinance substantially similar to one of those offenses involving a person who was a family or household member at the time of the violation, a violation of the third prohibition was a misdemeanor of the third degree, and a violation of either of the first two prohibitions was a felony of the fifth degree. (R.C. 2919.25.)

#### **Operation of the act**

The act expands the circumstances in which former law enhanced the penalty for the offense of domestic violence. Under the act, the penalty also is enhanced when the offender *previously pleaded guilty to* any of the offenses described above in "**Formerly.**" Under former law, the statutory language provided for enhancement of the penalty only when the offender previously had been convicted of any of those offenses. The act also expands the list of offenses that is relevant in determining the enhancement. Under the act, the penalty also is enhanced when the offender previously has been convicted of or pleaded guilty to a violation of a law of the United States or another state, or a municipal ordinance of a municipal corporation in another state that is substantially similar to the violations described above in "**Formerly.**" (R.C. 2919.25(D).)

#### **Intervention in lieu of conviction**

Preexisting law permits a court in specified circumstances to grant "intervention in lieu of conviction" to a person charged with a criminal offense. The act changes two of the nine eligibility requirements for intervention in lieu of conviction, but otherwise it retains the preexisting provisions that govern the procedure. Under the two requirements changed by the act:

(1) An offender is ineligible if: (a) the offender is charged with corrupting another with drugs, a drug trafficking offense, illegal manufacture of drugs or cultivation of marihuana, or illegal administration or distribution of anabolic

steroids, regardless of the degree of the offense (under prior law, an offender charged with one of those offenses was ineligible only if the charged offense was a felony of the first, second, or third degree), or (b) as under prior law, the offender is charged with a drug possession offense that is a felony of the first, second, or third degree. (R.C. 2951.041(B)(3).)

(2) It is clarified that an offender who is charged with a drug possession offense that is a felony of the fifth degree or a misdemeanor does not need prosecutorial approval in order to be eligible for intervention in lieu of conviction. It also is clarified that the preexisting provision that makes certain persons charged with a drug possession offense ineligible for treatment in lieu of conviction unless the prosecutor who is handling the case recommends that the offender be eligible for it applies only when the drug possession offense charged is a felony of the fourth degree. (R.C. 2951.041(B)(4).)

As under prior law, in order for an offender to be eligible for intervention in lieu of conviction, the court must make a finding that the offender does not have a disqualifying charge of either nature described above in (1) or (2) or any other existing disqualifying factor. (R.C. 2951.041(B).)

### **Felony sentencing**

The act modifies certain provisions of the preexisting law governing the sentencing of an offender for a felony, as described below.

#### **Sentencing guidelines for fourth or fifth degree felony**

**Formerly.** Under preexisting law, in sentencing an offender for a felony of the fourth or fifth degree, the sentencing court generally must determine whether any of a list of nine specified factors apply. If the court finds that one or more of those factors applies and if the court, after considering other specified factors, finds that a prison term is consistent with the purposes and principles of sentencing and that the offender is not amenable to an available community control sanction, the court must impose a prison term upon the offender. Otherwise, the sentencing court must impose a community control sanction upon the offender. (R.C. 2929.13(B)(1) and (2).)

Formerly, one of the nine factors the application of which the sentencing court generally was required to determine is whether the offender previously served a prison term (R.C. 2929.13(B)(1)(g)).

**Operation of the act.** The act revises the sentencing factor related to the offender's previous prison term to require the court, in sentencing an offender for a felony of the fourth or fifth degree, to determine whether *the offender at the time*

of the offense was serving, or previously had served, a prison term (R.C. 2929.13(B)(1)(g)).

### **Default length of sentence for a felony**

**Formerly.** Formerly, if the court imposing a sentence upon an offender for a felony elected or was required to impose a prison term on the offender *and if the offender previously had not served a prison term*, the court, subject to a few specified exceptions, was required to impose the shortest prison term authorized for the offense, unless the court found on the record that the shortest prison term would demean the seriousness of the offender's conduct or would not adequately protect the public from future crime by the offender or others (R.C. 2929.14(B)).

**Operation of the act.** The act modifies this provision to further limit the circumstances in which the court is required to impose the shortest prison term authorized for an offense. Under the act, the court also is not required to impose the shortest prison term under the provision *if the offender was serving a prison term at the time of the offense*. (R.C. 2929.14(B).)

Thus, under the act, subject to the exceptions specified under prior law, if the court imposing a sentence upon an offender for a felony elects or must impose a prison term on the offender, the court generally must impose the shortest prison term authorized for the offense, unless *one or more of the following applies*: (1) *the offender was serving a prison term at the time of the offense* (added by the act), *or the offender previously had served a prison term* (former law relocated), or (2) the court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others.

### **Definition of "repeat violent offender"**

**Operation of the act.** Preexisting law, described below and unchanged by the act except as described in the next sentence, provides special sentencing provisions (including, in certain circumstances, an extra prison term) for persons convicted of a felony who are found to be "repeat violent offenders." The act revises the definition of "repeat violent offender" so that, in addition to the persons to whom it formerly applied, it also applies to a person who is *serving at the time of the offense for which sentence is being imposed* a prison term for one of the following offenses (R.C. 2929.01(DD)(2)(a)).

(1) Aggravated murder, murder, involuntary manslaughter, rape, the former offense of felonious sexual penetration, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;

(2) An offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to an offense listed under the preceding paragraph and that resulted in the death of a person or in physical harm to a person.

**Formerly.** Under preexisting law, unchanged by the act, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification that the offender is a repeat violent offender, the court is required to impose a prison term from the range of terms authorized for the offense that may be the longest term in the range. If certain other criteria are met, the court is authorized to impose an additional prison term of 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years (R.C. 2929.14(D)(2)).

Under prior law, retained and expanded by the act as described above, "repeat violent offender" meant a person about whom both of the following applied (R.C. 2929.01(DD)):

(1) The person had been convicted of or had pleaded guilty to, and was being sentenced for committing, for complicity in committing, or for an attempt to commit, aggravated murder, murder, involuntary manslaughter, a felony of the first degree other than one set forth in the Drug Laws, a felony of the first degree set forth in the Drug Laws that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person, or a felony of the second degree that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person.

(2) Either of the following applied: (a) the person previously was convicted of or pleaded guilty to, *and served a prison term for*, any of the offenses listed above in paragraph (1) or (2) of "**Operation of the act,**" or (b) the person previously was adjudicated a delinquent child for committing an act that if committed by an adult would have been an offense listed above in paragraph (1) or (2) of "**Operation of the act,**" the person was committed to the Department of Youth Services for that delinquent act.

### **Consecutive prison terms**

The act revises the standard for consecutive service of prison terms for multiple felonies to permit the court, when multiple prison terms are imposed on an offender for convictions of multiple offenses, to require consecutive service of prison terms when the offender committed *one or more of the multiple offenses* while the offender was awaiting trial or sentencing, was under a community control sanction, or was under post-release control for a prior offense (formerly, the provision applied only when "the multiple offenses" were committed when the offender was awaiting trial or sentencing, was under such a sanction, or was under

post-release control for a prior offense). The result of this change is that the court may impose consecutive sentencing when the offender committed one or more of the offenses while the offender was not subject to one of the three conditions, provided that at least one is subject to one of the three conditions. The act also revises the standard to permit consecutive sentences to be imposed when there are multiple courses of conduct that include the multiple offenses, not just a single course of conduct. (R.C. 2929.14(E)(4)(a) and (b).)

Thus, under the act, if multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if it also finds any of the following (new language is in italics) (R.C. 2929.14(E)(4)):

(1) The offender committed *one or more* of the multiple offenses while the offender was awaiting trial or sentencing, was under a community control sanction, or was under post-release control for a prior offense.

(2) *At least two of the multiple offenses were committed as part of one or more courses of conduct, and* the harm caused by *two or more* of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of *any of the courses* (a single course in former law) of conduct adequately reflects the seriousness of the offender's conduct.

(3) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

#### *Sentencing factors for felonies*

*Operation of the act.* Preexisting law provides four lists of factors that a court sentencing an offender for a felony must consider in imposing sentence. The act retains three of these lists without change. The fourth list, described below, specifies factors indicating that the offender is likely to commit future crimes. The act expands this statutorily specified list of factors that a sentencing court must consider as indicating that the offender is likely to commit future crimes to include as a factor that, at the time of committing the offense, the offender had been unfavorably terminated from post-release control) see *'Unfavorable termination from post-release control,* " below) for a prior offense (R.C. 2929.12(D)).

*Formerly.* Under preexisting law, expanded by the act as described above, the sentencing court, among other statutorily described factors, must consider all

of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is likely to commit future crimes (R.C. 2929.12(D)):

(1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a community control sanction, or under post-release control for an earlier offense (this is the factor expanded by the act).

(2) The offender previously was adjudicated a delinquent child, or the offender has a history of criminal convictions.

(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

(4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

(5) The offender shows no genuine remorse for the offense.

### **Judicial release**

#### **Operation of the act**

Preexisting law, described below, provides for judicial release, in specified circumstances, for certain offenders serving a prison term for a felony. Prior law stated that offenders serving a stated prison term of exactly ten years were eligible for judicial release, but it did not specify when such an offender could file a motion for judicial release. The act corrects this oversight. Under the act, if the stated prison term is more than five years and *not more* than ten years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term. Similarly, if the stated prison term is more than five years and *not more* than ten years, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term. (R.C. 2929.20(B)(1)(c) and (4).)

#### **Preexisting law**

Preexisting law, unchanged by the act, provides that, upon the filing of a motion by an offender serving a prison term for a felony who is an "eligible

offender" or upon its own motion, a sentencing court may reduce an eligible offender's stated prison term through a judicial release. A person serving a stated prison term of *ten years or less* is eligible for judicial release if the term does not include a mandatory prison term or if the term includes a mandatory prison term and the person has served the mandatory prison term. Certain additional criteria must be met if an eligible offender is imprisoned for a felony of the first or second degree, or if an eligible offender committed an offense contained in the Drug Laws or the Controlled Substances Laws and for whom there was a presumption in favor of a prison term. If the court grants a motion for judicial release, the court must (1) order the release of the eligible offender, (2) place the eligible offender under an appropriate community control sanction, under appropriate community control conditions, and under the supervision of the probation department serving the court, and (3) reserve the right to reimpose the reduced sentence if the offender violates the sanction. (R.C. 2929.20(A), (H), and (I).)

Preexisting law, modified as described above, specifies when an eligible offender may file a motion for judicial release (R.C. 2929.20(B)).

### **Shock incarceration and intensive program prisons**

#### **Determination of eligibility**

**Prior law.** Prior law specified that, at the time of sentencing for a felony, the court was required to determine if an offender was eligible for placement in a program of shock incarceration (under R.C. 5120.031) or was eligible for placement in an intensive program prison (under R.C. 5120.032). The court could: (1) recommend the offender, if eligible, for placement in a program of shock incarceration or in an intensive program prison, (2) disapprove placement of the offender in either program, regardless of eligibility, or (3) make no recommendation on placement of the offender. The court was required to give its reasons for its recommendation or disapproval. (R.C. 2929.14(K) and 2929.19(D).)

If the court determined that the offender was eligible for placement in such a program or prison and recommended placement, DRC could place the offender in the program or prison. If the court determined that the offender was eligible for placement in such a program or prison but did not make a recommendation, DRC could place the offender in such a program or prison, but it was required to give the judge prior notice of its intent and the judge could disapprove of its placement. (R.C. 5120.031 and 5120.032.)

**Operation of the act.** The act repeals the requirement that the court must determine at the time of sentencing if a felony offender is eligible for placement in a program of shock incarceration or an intensive program prison and transfers that

duty to DRC. The court continues to have the authority to recommend the offender for placement in a program or prison of that nature, disapprove such a placement, or make no recommendation on placement of the offender. In no case may DRC place the offender in a program or prison of that nature unless DRC determines, as specified below, that the offender is eligible for the placement. If the court disapproves placement of the offender in a program or prison of that nature, DRC may not place the offender in any program of shock incarceration or intensive program prison. If the court recommends or disapproves placement, it must make a finding that gives its reasons for its recommendation or disapproval.

If the court recommends the offender for placement in such a program or prison and DRC determines that the offender is eligible for placement in such a program or prison, DRC may place the offender in the program or prison. If DRC places the offender, it must notify the court of the placement, and if DRC does not place the offender it must notify the court why the offender was not placed. If the court makes no recommendation on the placement of the offender and DRC determines that the offender is eligible for placement in such a program or prison, DRC may place the offender in such a program or prison, but it must give the judge prior notice of its intent, and the judge has ten days to disapprove of the placement. If DRC determines that the offender is not eligible for placement in such a program or prison, it may not place the offender in such a program or prison. (R.C. 2929.14(K), 2929.19(D), 5120.031(B)(1) and (C)(1), and 5120.032(B)(1)(a).)

### **Unfavorable termination from post-release control**

#### **Duty of Adult Parole Authority to classify post-release control terminations**

Under preexisting law, unchanged by the act, "post-release control" means a period of supervision by DRC's Adult Parole Authority (APA) after a prisoner's release from imprisonment that includes one or more post-release control sanctions (R.C. 2967.01(N)--not in the act).

The act requires the APA to classify the termination of post-release control as favorable or unfavorable depending on the offender's conduct and compliance with the conditions of supervision. The act also requires DRC, no later than six months after the act's effective date, to adopt a rule that establishes the criteria for the classification of a post-release control termination as "favorable" or "unfavorable." The rule must be adopted in accordance with the Administrative Procedure Act. (R.C. 2967.16(B).)

## **Committing a new felony while on post-release control**

### **Formerly**

Under prior law, a parolee or releasee who had violated any condition of parole, any post-release control sanction, or any conditions imposed upon the releasee by committing a felony could be prosecuted for the new felony, and, upon conviction, the court was required to impose sentence for the new felony. In addition to the sentence imposed for the new felony, the court could impose a prison term for the violation, and the term imposed for the violation had to be reduced by any prison term administratively imposed by the Parole Board or APA as a post-release control sanction. If the person was a releasee, the maximum prison term for the violation was required to be either the maximum period of post-release control for the earlier felony minus any time the releasee had spent under post-release control for the earlier felony or 12 months, whichever was greater. A prison term imposed for the violation was required to be served consecutively to any prison term imposed for the new felony. If the person was a releasee, a prison term imposed for the violation, and a prison term imposed for the new felony, could not count as, or be credited toward, the remaining period of post-release control imposed for the earlier felony. (R.C. 2967.28(F)(4).)

### **Operation of the act**

The act relocates this provision and modifies it by (R.C. 2929.141 and repeal of 2967.28(F)(4)): (1) permitting the court to terminate the term of post-release control as a result of the violation, (2) authorizing the court to impose community control sanctions for the violation, and (3) rephrasing portions of the provision.

Specifically, under the act, a "person on release" (i.e., a "parolee" or "releasee" under preexisting R.C. 2967.01 definitions) who by committing a felony violates any condition of parole, any post-release control sanction, or any conditions imposed upon the person under R.C. 2967.131(A) may be prosecuted for the new felony. Upon the person's conviction of or plea of guilty to the new felony, the court must impose sentence for the new felony, may terminate the term of post-release control if the person is a releasee, and may do either or both of the following for the person regardless of whether the sentencing court or another Ohio court imposed the original prison term for which the person is on parole or is serving a term of post-release control (R.C. 2929.141):

(1) In addition to any prison term for the new felony, impose a prison term for the violation. If the person is a releasee, the maximum prison term for the violation must be the greater of 12 months or the period of post-release control for the earlier felony minus any time the releasee has spent under post-release control

for the earlier felony. In all cases, any prison term imposed for the violation must be reduced by any prison term administratively imposed by the Parole Board or Adult Parole Authority as a post-release control sanction. In all cases, a prison term imposed for the violation must be served consecutively to any prison term imposed for the new felony. If the person is a releasee, a prison term imposed for the violation, and a prison term imposed for the new felony, do not count as, and cannot be credited toward, the remaining period of post-release control imposed for the earlier felony.

(2) Impose a community control sanction for the violation, to be served concurrently or consecutively, as specified by the court, with any community control sanctions for the new felony.

The act provides that, if an offender is imprisoned for a felony committed while under post-release control supervision and is again released on post-release control, the maximum cumulative prison term for all violations cannot exceed half of the total stated prison terms of the earlier felony, reduced by any prison term administratively imposed by the Parole Board, plus half of the total stated prison term of the new felony (R.C. 2967.28(F)(3)).

When a prisoner who has been released under a period of post-release control has the period of post-release control terminated pursuant to the preceding provision, the APA, upon the recommendation of the superintendent of DRC's parole supervision section, may enter upon its minutes a final release and, upon the entry of the final release, must issue to the released prisoner a certificate of final release. (R.C. 2967.16(B)(1).)

The act also makes cross-reference changes in relation to the relocation of the provision. (R.C. 5120.031(C)(2), 5120.032(B)(1)(b), 5120.033(C), and 5145.01.)

### **Duties of the State Criminal Sentencing Commission**

#### **Formerly**

Under preexisting law, unchanged by the act, the State Criminal Sentencing Commission must review all forfeiture statutes in the Criminal Code (R.C. Title 29) and the Motor Vehicles Law (R.C. Title 45) and recommend to the General Assembly any necessary changes to those statutes. Under prior law, the Commission was required to make the recommendations not later than July 1, 2001. (R.C. 181.25(B).)

**Operation of the act**

The act changes the date the recommendations are due from July 1, 2001, to July 1, 2002 (R.C. 181.25(B)).

**Nursing Law and Dialysis Technician Law--criminal records checks, duties, and training**

**Applications for licensure to practice as a nurse--criminal records checks**

**Formerly.** Under preexisting law, unchanged by the act, an application for *licensure by examination* to practice as a registered nurse or as a licensed practical nurse must be submitted to the Board of Nursing in the form prescribed by rules of the Board. The application must include evidence that the applicant has completed requirements of an approved nursing education program and any other information the Board requires and be accompanied by an application fee. Formerly, the Board was required to grant the license if the applicant passed an appropriate examination and the Board determined that the applicant had not committed any act that is grounds for disciplinary action, determined that an applicant who has committed such acts has made restitution or had been rehabilitated, or both.

Similarly, under preexisting law, unchanged by the act, a person may apply for a *license by endorsement* by submitting to the Board an application that is accompanied by an application fee. The application must include evidence that the applicant holds a license in good standing in another jurisdiction granted after passing an approved examination and other information the Board requires. Formerly, the Board was required to grant a license by endorsement if the applicant is licensed or certified by another jurisdiction and the Board determines that all of the following applied:

- (1) The educational preparation of the applicant was substantially similar to the minimum curricula and standards for nursing education programs in the Nursing Law;
- (2) The examination, at the time it was successfully completed, was equivalent to the examination requirements in effect at that time for applicants who were licensed by examination in Ohio;
- (3) The applicant had not committed any act that is grounds for disciplinary action, or that an applicant who had committed such acts had made restitution or had been rehabilitated, or both. (R.C. 4723.09.)

**Operation of the act.** The act provides that, in addition to the eligibility criteria under prior law, certain applicants for licensure by examination to practice nursing as a registered nurse or a licensed practical nurse, and all applicants for

license by endorsement to practice as a registered nurse or a licensed practical nurse, must successfully complete a criminal records check in order to be licensed. Under the act, when the Board is considering an application for licensure by examination to practice as a registered nurse or as a licensed practical nurse *that is submitted by an applicant who entered a prelicensure nursing education program on or after June 1, 2003*, or when the Board is considering an application for licensing by endorsement *that is submitted by any applicant*, the Board must grant the license if: (1) the applicant meets the criteria for the particular method of licensing described above under "***Formerly***" and (2) additionally, the criminal records check of the applicant that is completed upon request of the applicant (see below) by the Bureau of Criminal Identification and Investigation (BCII) and includes a check of Federal Bureau of Investigation (FBI) records and that BCII submits to the Board indicates that the applicant has not been convicted of, has not pleaded guilty to, and has not had a judicial finding of guilt for committing aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or a substantially similar law of another state, the United States, or another country. The Board must refuse to grant the license if the applicant has been convicted of, pleaded guilty to, or had a judicial finding of guilt for committing any offense identified in clause (2) of the preceding sentence. (R.C. 4723.09(A) and (B) and 4723.28(N)(1).)

The act also requires "an applicant for licensure by examination" (note that R.C. 4723.09(C) appears to apply this requirement to all applicants for licensure by examination but that R.C. 4723.28(N)(1) applies it only to applicants for licensure by examination who enter a prelicensure nursing education program on or after June 1, 2003) or by endorsement to practice nursing to submit a request to BCII for a criminal records check of the applicant. The request must be on the form prescribed by BCII pursuant to preexisting R.C. 109.572(C)(1), not in the act, be accompanied by a standard impression sheet to obtain fingerprints prescribed by BCII pursuant to preexisting R.C. 109.572(C)(2), not in the act, and be accompanied by the fee prescribed by BCII pursuant to preexisting R.C. 109.572(C)(3), not in the act. Upon receipt of the completed form, the completed impression sheet, and the fee, BCII must complete a criminal records check of the applicant and, upon completion of the check, must send the results to the Board. The applicant must ask the Superintendent of BCII to also request the FBI to provide the Superintendent with any information it has with respect to the applicant.

The results of any criminal records check conducted pursuant to a request made under this provision, and any report containing those results, are not public records for purposes of the preexisting Public Records Law (not in the act) and cannot be made available to any person or for any purpose other than the



following: (1) they may be made available to any person, for use in determining under the act's provisions whether the individual who is the subject of the check should be granted a license to practice nursing as a registered nurse or as a licensed practical nurse or whether any temporary permit granted to the individual under this section has terminated automatically (see below), and (2) they may be made available to the individual who is the subject of the check or that individual's representative. (R.C. 4723.09(C) and 4723.28(N)(1).)

**Temporary permit to practice nursing, for an applicant for license by endorsement**

**Formerly.** Preexisting law, unchanged by the act, provides that, if a person applies for license by endorsement to practice nursing as a registered nurse or as a licensed practical nurse, the Board of Nursing may grant the applicant a nonrenewable temporary permit to practice as a registered nurse or as a licensed practical nurse if the Board is satisfied by the evidence that the applicant holds a current, active license in good standing in another jurisdiction. Under prior law, the temporary permit expired at the earlier of 120 days after issuance or upon issuance of a license by endorsement. (R.C. 4723.09(B).)

**Operation of the act.** The act modifies the duration of a temporary permit issued under this provision and provides for the earlier, automatic termination of such a temporary permit in specified circumstances. Under the act, subject to earlier automatic termination as described below, the temporary permit expires at the *earlier of 180 days after issuance* (increased from 120 days) or upon the issuance of a license by endorsement. Further, under the act, the temporary permit terminates automatically if the criminal records check completed by BCII regarding the applicant, as described above, indicates that the applicant previously has been convicted of, pleaded guilty to, or had a judicial finding of guilt for, any of the offenses that disqualify an applicant for the issuance of a license to practice nursing, as described above in "**Applications for licensure to practice as a nurse--criminal records checks.**" An applicant whose temporary permit is automatically terminated is permanently prohibited from obtaining a license to practice nursing in Ohio as a registered nurse or as a licensed practical nurse. (R.C. 4273.09(B).)

**Certification to work as a dialysis technician--criminal records checks and other criteria**

**Formerly.** Prior law required the Board of Nursing to issue a certificate to practice as a dialysis technician to a person who met all of the following requirements (R.C. 4723.75(A)): (1) the person applied to the Board and includes the application fee, (2) the person was 18 years of age or older and possessed a high school diploma or high school equivalence diploma, (3) the person met

certain requirements established by the Board, and (4) the person demonstrated competency to practice as a dialysis technician.

**Operation of the act.** The act repeals the certification criterion described in (2) of the preceding paragraph (but see below). In addition to the remaining criteria, the act requires a person who applies for a certificate to practice as a dialysis technician and who entered a dialysis training program on or after June 1, 2003, to successfully complete a criminal records check in order to be licensed. Under the act, when the Board is considering an application for certification to practice as a dialysis technician that is made by such a person, the Board must grant the certificate if: (1) the applicant meets the criteria described above under "**Formerly**" other than the criterion described in (2) of that paragraph, and (2) additionally, the criminal records check of the applicant that is completed by BCII and includes a check of FBI records and that BCII submits to the Board indicates that the applicant has not been convicted of, has not pleaded guilty to, and has not had a judicial finding of guilt for committing aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or a substantially similar law of another state, the United States, or another country. The Board must refuse to issue the certificate if the applicant has been convicted of, pleaded guilty to, or had a judicial finding of guilt for committing any offense identified in clause (2) of the preceding sentence. (R.C. 4723.28(N)(2) and 4723.75(A).)

The act also requires "an applicant for certification" (note that R.C. 4723.75(C) appears to apply this requirement to all applicants for certification but that R.C. 4723.28(N)(2) applies it only to applicants who enter a dialysis training program on or after June 1, 2003) to submit a request to BCII for a criminal records check of the applicant. The request must be on the form prescribed by BCII pursuant to preexisting R.C. 109.572(C)(1), not in the act, be accompanied by a standard impression sheet to obtain fingerprints prescribed by BCII pursuant to preexisting R.C. 109.572(C)(2), not in the act, and be accompanied by the fee prescribed by BCII pursuant to preexisting R.C. 109.572(C)(3), not in the act. Upon receipt of the completed form, the completed impression sheet, and the fee, BCII must complete a criminal records check of the applicant and, upon completion of the check, must send the results to the Board. The applicant must ask the Superintendent of BCII to also request the FBI to provide the Superintendent with any information it has with respect to the applicant.

The results of any criminal records check conducted pursuant to a request made under this provision, and any report containing those results, are not public records for purposes of the preexisting Public Records Law (not in the act) and cannot be made available to any person or for any purpose other than the



following: (1) they may be made available to any person, for use in determining under the act's provisions whether the individual who is the subject of the check should be granted a license to practice nursing as a registered nurse or as a licensed practical nurse or whether any temporary permit granted to the individual under this section has terminated automatically (see below), and (2) they may be made available to the individual who is the subject of the check or that individual's representative. (R.C. 4723.75(C) and 4723.28(N)(2).)

As stated above, the act repeals as a criterion for certification as a dialysis technician the provision that formerly provided that the applicant for certification had to be 18 years of age or older and possess a high school diploma or high school equivalence diploma. The act relocates this criterion, though, as a criterion for enrollment in a dialysis training program. Under the act, a person may not be permitted to enroll, and may not enroll, in a dialysis training program approved by the Board under preexisting law unless the person is 18 years of age or older and possesses a high school diploma or equivalence diploma. (R.C. 4723.74, and repeal of R.C. 4723.75(A)(2).)

#### **Board of Nursing sanctions**

**Formerly.** Under preexisting law, unchanged by the act but made subject to the provision described in the next paragraph, for certain violations or other specified conduct, the Board of Nursing may impose one or more of the following sanctions: *deny*, revoke, suspend, or place restrictions on any nursing license, certificate of authority, or dialysis technician certificate issued by the Board; reprimand or otherwise discipline a holder of a nursing license, certificate of authority, or dialysis technician certificate; or impose a fine of not more than \$500 per violation (R.C. 4723.28(B)). Among the violations and other conduct for which the sanctions may be imposed are a conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice, a felony or a crime involving gross immorality or moral turpitude, an act in another jurisdiction that would constitute a felony or a crime of moral turpitude in Ohio, or an act in the course of practice in another jurisdiction that would constitute a misdemeanor in Ohio (R.C. 4723.28(B)(3), (4), (6), and (7)).

**Operation of the act.** Under the act, the Board is required to refuse to grant a license to practice nursing as a registered nurse or as a licensed practical nurse to a person who entered a prelicensure nursing education program on or after June 1, 2003, and applied for licensure by examination to practice as a nurse or a person who applied for licensure by endorsement to practice as a nurse, if the criminal records check performed under the act (see "**Applications for licensure to practice as a nurse--criminal records checks,**" above) indicates that the person has



pleaded guilty to, been convicted of, or has had a judicial finding of guilt for committing aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or a substantially similar law of another state, the United States, or another country. Similarly, the act requires the Board to refuse to grant a certificate to practice as a dialysis technician to a person who entered a dialysis training program on or after June 1, 2003, and whose criminal record check performed under the act (see "*Certification to work as a dialysis technician--criminal records check and other criteria*," above) indicates that the person has pleaded guilty to, been convicted of, or has had a judicial finding of guilt for committing offenses of that nature. (R.C. 4723.28(N).)

### *Administration of medication by a dialysis technician*

*Formerly*. Preexisting law, unchanged by the act, provides that a dialysis technician may administer medication only as ordered by a licensed health professional authorized to prescribe drugs as defined in R.C. 4729.01 and in accordance with the standards established in rules adopted under R.C. 4723.79. Under this provision, a dialysis technician may administer only certain specified medications. Under prior law, the specified medications that could be administered were: (1) intradermal lidocaine or other single therapeutically equivalent local anesthetic for the purpose of initiating dialysis treatment, (2) intravenous heparin or other single therapeutically equivalent anticoagulant for the purpose of initiating and maintaining dialysis treatment, (3) intravenous normal saline, or (4) patient-specific dialysate, to which the person may add electrolytes but no other additives or medications. (R.C. 4723.72(C).)

*Operation of the act*. The act expands the list of specified medications that a dialysis technician may administer, when ordered by a licensed health professional authorized to prescribe drugs and in accordance with the standards established in rules adopted under R.C. 4723.79, to also include, in addition to the medications specified under prior law, *oxygen when the administration of the oxygen has been delegated to the technician by a registered nurse* (R.C. 4723.72(C)).

### *Dialysis technical continuing education*

*Formerly*. Preexisting law, unchanged by the act, provides that a certificate issued to a person to practice as a dialysis technician expires biennially and must be renewed according to a schedule the Board of Nursing establishes by rule. An application for renewal of a certificate must be accompanied by the renewal fee the Board adopts by rule. Under preexisting law, retained by the act but qualified as described in the next paragraph, a certificate may be renewed only if, during the period for which the certificate was issued, the certificate holder satisfied the

continuing education requirements established by the Board's rules. (R.C. 4723.77.)

**Operation of the act.** The act imposes a limitation on the types of education that satisfy the existing continuing education requirement for renewal of a certification as a dialysis technician. It specifies that, of the hours of continuing education completed during the period for which the certificate was issued, at least one hour of the education must be directly related to the statutes and rules pertaining to the practice of nursing in Ohio or the practice as a dialysis technician in Ohio. (R.C. 4723.77.)

### **Unauthorized access to a cable service or cable system**

#### **Offense of "unauthorized use of property"**

**Formerly.** Preexisting law, retained by the act but expanded as described below, prohibits a person from: (1) knowingly using or operating the property of another without the consent of the owner or person authorized to give consent, or (2) knowingly gaining access to, attempting to gain access to, or causing access to be gained to any computer, computer system, computer network, telecommunications device, telecommunications service, or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, computer network, telecommunications device, telecommunications service, or information service or other person authorized to give consent by the owner. The affirmative defenses contained in R.C. 2913.03(C) are affirmative defenses to a charge of a violation of these prohibitions.

A violation of the prohibition described in clause (1) is the offense of "unauthorized use of property." Generally, that offense is a misdemeanor of the fourth degree, but in certain specified circumstances it is a misdemeanor of the first degree, a felony of the fifth degree, a felony of the fourth degree, a felony of the third degree, or a felony of the second degree. A violation of the prohibition described in clause (2) is the offense of "unauthorized use of computer or telecommunication property," a felony of the fifth degree. (R.C. 2913.04.)

**Operation of the act.** The act retains the preexisting prohibition that constitutes the offense of "unauthorized use of computer or telecommunication property, as described above," but expands the prohibition so that, in addition to the previously prohibited conduct, the prohibition also prohibits knowingly gaining access to, attempting to gain access to, or causing access to be gained to any "cable service" or "cable system" (see below) without the consent of, or beyond the scope of the express or implied consent of, the owner of the cable service or cable system or other person authorized to give consent by the owner.



The act renames the offense "unauthorized use of computer, cable, or telecommunication property," and it remains a felony of the fifth degree. The affirmative defenses contained in R.C. 2913.03(C) remain affirmative defenses to a charge of a violation of the prohibition. (R.C. 2913.04(B), (C), and (E).)

The act expands the existing definitions of "services" and "gain access" that apply to R.C. Chapter 2913. to include references to cable services and cable systems, as defined in the act. Under the act, for purposes of R.C. Chapter 2913.: (1) "services" includes labor, personal services, professional services, public utility services, common carrier services, and food, drink, transportation, entertainment, and cable television services *and, for purposes of R.C. 2913.04, includes cable services as defined in that section*, and (2) "gain access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network, *or any cable service or cable system as defined in R.C. 2913.04*. (R.C. 2913.01(E) and (T).)

The act defines the following terms, for purposes of expanded R.C. 2913.04 (R.C. 2913.04(F)):

(1) "Cable operator" means any person or group of persons that either: (a) provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in that cable system, or (b) otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(2) "Cable service" means any of the following: (a) the one-way transmission to subscribers of video programming or of information that a cable operator makes available to all subscribers generally, (b) subscriber interaction, if any, that is required for the selection or use of video programming or of information that a cable operator makes available to all subscribers generally, both as described in clause (a) of this paragraph, and (c) any "cable television service," as defined in preexisting R.C. 2913.01 (see **COMMENT**).

(3) "Cable system" means any facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community. "Cable system" does not include any of the following: (a) any facility that serves only to retransmit the television signals of one or more television broadcast stations, (b) any facility that serves subscribers without using any public right-of-way, (c) any facility of a common carrier that, under 47 U.S.C.A. 522(7)(c), is excluded from the term "cable system" as defined in 47 U.S.C.A. 522(7), (d) any



open video system that complies with 47 U.S.C.A. 573, or (e) any facility of any electric utility used solely for operating its electric utility system.

**Civil action to recover damages for an R.C. 2913.041 (or 2913.04(B)) violation**

**Formerly.** Preexisting law, retained by the act but expanded as described below, provides that an owner or operator of a "cable television system" (see below) or other similar closed circuit coaxial cable communications system who is aggrieved by conduct that is prohibited by R.C. 2913.041(A) or (B) (see **COMMENT**) may elect to commence a civil action for damages in accordance with R.C. 2307.60 or 2307.61 or to commence a civil action under the provision described in this part of the analysis in the appropriate municipal court, county court, or court of common pleas to recover damages and other specified moneys described below from the persons who violated R.C. 2913.041(A) or (B). If the owner or operator elects to commence a civil action for damages and other specified moneys under the provision described in this part of the analysis, the owner or operator must specify in its complaint which of the following categories of damages and other specified moneys the owner or operator seeks to recover from the persons who violated R.C. 2913.041(A) or (B): (1) full compensatory damages, punitive or exemplary damages if authorized by R.C. 2315.21, and the reasonable attorney's fees, court costs, and other reasonable expenses incurred in maintaining the civil action, (2) damages equal to the actual loss suffered by the owner or operator as a proximate result of the conduct that violated R.C. 2913.041(A) or (B) and, in addition, damages equal to the profits derived by the persons who violated either or both of those divisions as a proximate result of the prohibited conduct, or (3) liquidated damages in an amount of not less than \$250 and not more than \$10,000, as determined by the trier of fact, for each separate violation of R.C. 2913.041(A) or (B) as described in R.C. 2913.041(D).

The trier of fact determines the amount of any compensatory damages to be awarded under clause (1), and the court determines the amount of any punitive or exemplary damages authorized by R.C. 2315.21 and the amount of reasonable attorney's fees, court costs, and other reasonable expenses to be awarded under that clause. The trier of fact determines the amount of damages to be awarded to the owner or operator under clause (2).

In a civil action under this provision, if an owner or operator of a cable television system or other similar closed circuit coaxial cable communications system establishes by a preponderance of the evidence that the persons who violated R.C. 2913.041(A) or (B) engaged in the prohibited conduct for the purpose of direct or indirect commercial advantage or private financial gain, the trier of fact may award to the owner or operator damages in an amount not to exceed \$50,000 in addition to any amount recovered pursuant to the provision.



A person may join a civil action under this provision with a civil action under R.C. Chapter 2737. to recover any property of the owner or operator of a cable television system or other similar closed circuit coaxial cable communications system that was the subject of the violation of R.C. 2913.041(A) or (B). A person may commence a civil action under this provision regardless of whether any person who allegedly violated either or both of those divisions has pleaded guilty to or has been convicted of a violation of either or both of those divisions or has been adjudicated a delinquent child for the commission of any act that constitutes a violation of either or both of those divisions.

As used in this provision, "profits" derived from a violation of R.C. 2913.041(A) or (B) are equal to whichever of the following applies: (1) the gross revenue derived from the violation by the persons who committed it, as established by a preponderance of the evidence by the owner or operator of the cable television system or other similar closed circuit coaxial cable communications system who is aggrieved by the violation, (2) the gross revenue derived from the violation by the persons who committed it, as established by a preponderance of the evidence by the owner or operator of the cable television system or other similar closed circuit coaxial cable communications system who is aggrieved by the violation, minus deductible expenses and other elements of profit that are not attributable to the violation, as established by a preponderance of the evidence by the persons who committed the violation. (R.C. 2307.62.)

**Operation of the act.** The act expands this provision to also permit an owner or operator of a "cable service" or "cable system" who is aggrieved by conduct that is prohibited by R.C. 2913.04(B), as amended by the act (see "**Offense of 'unauthorized use of property'**," above), to elect to commence a civil action for damages in accordance with R.C. 2307.60 or 2307.61 or to commence a civil action under the preexisting provision described above to recover damages and other specified moneys described below from the persons who violated R.C. 2913.04(B). The act modifies all of the preexisting procedural matters described above, to conform them to this expansion of the provision relative to violations of R.C. 2913.04(B). (R.C. 2307.62.)

### **Ohio Council for Interstate Adult Offender Supervision**

#### **Preexisting law**

Sub. H.B. 269 of the 124th General Assembly enacted into Ohio law the "Interstate Compact for Adult Offender Supervision" and entered Ohio into the Compact with all other jurisdictions legally joining in the Compact in the form substantially as set forth in the act. In a provision separate from, but related to, the Interstate Compact, the act also established the Ohio Council for Interstate Adult Offender Supervision, consisting of seven members. The Ohio Council will



exercise oversight and advocacy concerning the state's participation in activities related to the Interstate Compact and other duties as may be determined by the state, including, but not limited to, development of policy concerning operations and procedures of the Compact within Ohio (R.C. 5149.21 and 5149.22). These provisions take effect upon the later of 180 days after Sub. H.B. 269's effective date or upon legislative enactment of the Interstate Compact into law by 35 states (Section 3 of Sub. H.B. 269).

The membership of the Ohio Council will be as follows: (1) one member will be the Ohio Compact administrator or the administrator's designee, (2) the Speaker of the House of Representatives will appoint one member, who will be a member of the House, (3) the President of the Senate will appoint one member, who will be a member of the Senate, (4) the Chief Justice of the Supreme Court will appoint one member, who will be a member of the judiciary, and (5) the Governor will appoint three members, one of whom will be a representative of a crime victim's organization and one of whom will be from the executive branch. Each appointee to the Ohio Council will be appointed in consultation with DRC and will serve at the pleasure of the appointing authority. The Ohio Compact administrator, or the administrator's designee, will serve as commissioner of the Ohio Council and as Ohio's representative to the interstate commission. (R.C. 5149.22.)

### **Operation of the act**

The act provides that the members of the Ohio Council will serve without compensation, but that each member will be reimbursed for the member's actual and necessary expenses incurred in the performance of the member's official duties on the Ohio Council. The act specifies that this provision will take effect on the effective date of R.C. 5149.22, which is the time specified in Section 3 of Sub. H.B. 269 of the 124th General Assembly, as described above, or on the earliest date permitted by law, whichever is later. (R.C. 5149.22 and Section 3.)

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## **COMMENT**

Preexisting R.C. 2913.041, not in the act, prohibits a person from knowingly: (1) possessing any device, including any instrument, apparatus, computer chip, equipment, decoder, descrambler, converter, software, or other device specially adapted, modified, or remanufactured for gaining access to *cable television service*, without securing authorization from or paying the required compensation to the owner or operator of the system that provides the cable television service, or (2) selling, distributing, or manufacturing any device, including any instrument, apparatus, computer chip, equipment, decoder, descrambler, converter, software, or other device specially adapted, modified, or

remanufactured for gaining access to *cable television service*, without securing authorization from or paying the required compensation to the owner or operator of the system that provides the cable television service. A violation of the first prohibition is the offense of "possession of an unauthorized device," a felony of the fifth degree. A violation of the second prohibition is the offense of "sale of an unauthorized device," a felony of the fourth degree. A person commits a separate violation of these prohibitions with regard to each device that is sold, distributed, manufactured, or possessed in violation of either prohibition. Preexisting R.C. 2913.01(S), unchanged by the act, defines "cable television service" as any services provided by or through the facilities of any cable television system or other similar closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-12-01	p. 803
Reported, H. Criminal Justice	01-15-02	p. 1231
Passed House (97-0)	01-16-02	pp. 1236-1237
Reported, S. Judiciary on Criminal Justice	02-27-02	p. 1523
Passed Senate (32-1)	03-05-02	pp. 1547-1548
House concurred in Senate amendments (86-8)	03-12-02	pp. 1505-1506

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